IN THE HIGH COURT OF UTTARANCHAL AT ANINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 527 of 2002 (S/B)

Sri Rajendra Prasad Sharma ..... Petitioner.

Versus

Senior Regional Manager,
Food Corporation and another ..... Respondents

Date of decision: 29 October, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANHCHAL AT NAINITAL

Civil Writ Petition No. 527 of 2002 (S/B)

Shri Rajendra Prasad Sharma ..... Petitioner

Versus

Senior Regional Manager
Food corporation of india
Lucknow and another ..... Respondents

Mr. I.P. Gairola, learned counsel for the petitioner.
Mr. M.C. Pandey, learned counsel for respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus directing respondents to promote the petitioner from the post of Assistant Grade II to Assistant Grade I.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner joined his services with Food Corporation of India on 29.04.1976. he started his career as Assistant Grade III (D) and considering his service record, he was promoted to the post of Assistant Grade II (D) vide office order dated 30.12.1987. The procedure of promotion of staff of Food Corporation of India (for brevity F.C.I.) is provided in the F.C.I. (staff) Regulations, 1971. Vide the Officer Order dated 20.10.2000 (copy Annexure- 1 to writ petition), the petitioner was declared fit for promotion from the post of Assistant Grade II to the post Assistant Grade I and his name figured at serial no. 76 in the list of promotees. However, the senior Regional Manager, F.C.I. who is arrayed as Respondent no. 1 to the writ petition has held up the promotion of the petitioner. It is alleged

by the petitioner that the respondent No. 1 has no authority to withhold the promotion, which was approved by higher authority i.e. Zonal Manager (North), F.C.I. It is further alleged that the persons junior to the petitioner, in similarly situated conditions, have been promoted while the petitioner has been left out. Aggrieved by no action on the part of the respondents even after making the representation, this writ petition is filed.

3) On behalf of the respondents, a counter affidavit has been filed in which it has been admitted that the petitioner was appointed as Assistant Grade III in F.C.I. and was subsequently, promoted to the post of Assistant Grade II. It is also admitted that in the list of promotion to Assistant Grade I, the petitioner's name did figure at serial no. 76 in the list of candidates due for promotion. However, it is stated that the petitioner was not promoted for the reason of his involvement in a vigilance enquiry in which he obtained a stay order from High Court judicature at Allahabad and disciplinary proceedings against him could not be initiated. It is further alleged that before formally issuing the promotion orders, it was necessary for the authorities to check if any enquiry is pending against the candidates. Lastly, it is stated in the counter affidavit that the promotion of juniors could not have been held up for the enquiry as against the petitioner.

4) In the rejoinder affidavit the petitioner has stated that the enquiry mentioned in the counter affidavit has already been dropped in the year 1990. He has further stated that the said enquiry was against two other officials also namely Y.P. Sharma and Daya Ram but the respondents have not held up their promotion like that of the petitioner.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the respondents have wrongly held up the promotion of the petitioner from the post of Assistant Grade II to Assistant Grade I.

6) Admittedly, the petitioner started his career with F.C.I. as Assistant Grade III and subsequently, promoted to the post of Assistant Grade II. It is also not disputed that his name figures in the list of candidates who have been approved for promotion from the post of Assistant Grade II to the post of Assistant Grade I. it is also not denied that even after his approval for promotion from Assistant Grade II to Assistant Grade I, the promotion orders have not been issued. The entire dispute relates to the point if some enquiry is pending against the petitioner. If so, are the respondents justified in not releasing the promotion orders of the petitioner. Before further discussions, it is pertinent to mention the relevant provisions of rules which apply to the promotion in question. Regulation no. 10 of F.C.I. (Staff) Reguations 1971 reads as under:

> *"i) Promotion shall be made on the basis of seniority subject to fitness in respect of non-selection post indicated in Appendix-I.*
> *ii) Promotion in respect of selection posts indicated in Appendix I of the Staff Regulations shall be made on the basis of merit, seniority being considered only when the merit of contending candidates is approximately the same.*

iii) All promotions shall be considered by a promotion board duly constituted for this purpose and shall be regulated by the general instructions to be issued by the Board of Directors in regard to the field of choice of candidates, the size of the panel and validity of the panel."

Now this court has to see if the petitioner's name was approved for promotion in accordance with the rules and can it be held up thereafter. Copy of the Office Order no. 182/200/E. IX dated 20.10.2000 (copy Annexure-1 to the writ petition) shows that the list of promotion was prepared by the zonal office of the F.C.I. at New Delhi. From the list attached to the order, it is also clear that name of the petitioner appears at serial no. 76 for promotion. It is nobody's case that the promotion list was not prepared according to rules. now, I have to see if the formal promotion could nave been held up by the respondent No. 1 for affidavit it is mentioned that some enquiry was pending against the petitioner with regard to which he filed some writ petition earlier before the Allahabad High Court. In reply to said allegation, in the rejoinder affidavit, it has been clarified that the said Inquiry was closed on 11th September 1990 (copy of enquiry report is annexed at Annexure R.A. 1 to the rejoinder affidavit). Para two of said report of the Inquiry Officer, reads as under:-

"The charge sheet was issued in 1988 and a period of two years has since lapsed, but documents are not available on which charges have been based. The onus of presenting the case and proving the charges remains on prosecution and it is not expected that in

near future evidence/documents will be available hence there is not reason to delay and adjourn the case further.

In view of the above position the case is closed ex-parte due to default on the part of prosecution."

The above report mak

es it clear that the Inquiry was dropped for fault on the part of the department. Annexure R.A. 2 to the rejoinder affidavit shows that the inquiry was again restored vide order dated 29.01.1993, which reads as under:-

"Whereas Shri A.A. Kazmi, DM (G) was appointed Inquiry Officer vide order of even no. 1047 dated 04.04.90 who conducted and completed enquiry under Regulation, 58 of FCI (Staff) Regulation, 1971.

Now, therefore, undersigned considers that further enquiry should be conducted because case was not presented before enquiry officer and an enquiry officer should be appointed to conduct enquiry by extending adequate opportunity to both the sides to meet with the ends of justice.

Now, therefore, the undersigned in exercise of powers conferred under Regulation, 58 and 59 of FCI (Staff) Regulations, 1971 hereby appoints Shri K.K. Tewari (Retd.) Dy. Director (Pres) U.P. Govt. Lucknow as Inquiry Officer in place of Shri K.N. Dhanvick, DM (G) who has been transferred to Shahjahanpur. Shri A.R.M.M. Abbasi, AM (OC), FCI, RO Lucknow already appointed as Presenting Officer in this case will present the case:

1. Shri Y.P. Sharma, AM(D), FCI Srinagar (U.P.)

2. Shri Daya Ram, AG-I(D), FCI Karnale (Punjab)

3. Shri R.P. Sharma, AG-II(D), FCI, Dehradun

4. Shri Bahadur Singh Khandoor, AG-III(D), FCI, Saharnapur."

Sd/illegile

(K.K. Sinha)

Senior Regional Manager

The above Order of the senior Regional Manager shows that the inquiry was restored and Inquiry Officer was changed. However, what progress has taken place in last 11 years has not been clarified in the counter affidavit of the respondents. Had there been inquiry initiated after the date of approval but before formal orders of promotion are issued, there could have been justification to withhold the promotion, but here the enquiry was very much in the knowledge of the department at the time of the approval of the petitioner. This was not only pending against the petitioner alone but also against Shri Y.P. Sharma and Daya Ram regarding whom petitioner has alleged that they have been promoted though they were also similarly situated with the petitioner. Learned counsel for the respondents failed to explain to the court how the other two persons similarly situated were promoted leaving the petitioner alone. This act on the part of the respondents appears to be arbitrary and violative of Article 14 of the Constitution of India.

7) In the circumstances, in view of the above discussion, this Court is of the opinion that the petitioner has wrongly been denied his promotion by withholding it after his name was approved by the Zonal office. Therefore, the writ petition is allowed. A mandamus is issued to the respondents to issue

promotion orders of the petitioner in compliance of the office order no. 182/2000/E. IX dated 20.10.2000 issued by Zonal office of Food Corporation of India, New Delhi within a period of one month. No order as to costs.

(Prafulla C. Pant, J.)

Dt: October 29, 2004
Sweta